Supreme Court, U.S.
FILED
APR 17 2002
OFFICE OF THE CLERK

No. 01-1200

IN THE

Supreme Court of the United States

SOUTHERN COMPANY, *et al.*,

Petitioners,

v.

RICHARD T. ALDERSON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENT PAUL DANIELSON

KIRSTEN M. DUNNE
Counsel of Record
JOSEPH P. SORCE
GOLDBERG, WEISMAN & CAIRO, LTD.
Attorneys for Respondent Paul Danielson
One East Wacker Drive
Suite 3400
Chicago, IL 60601-9654
(312) 464-1200

173498

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits Illinois courts to assert general personal jurisdiction over corporations which own and operate a power plant sitting in Indiana and abutting the Indiana-Illinois state line, where (a) they have agreed to sell all of the plant's output to an Illinois corporation for ultimate use in Illinois; (b) the plant's operation is governed by a series of contracts, several of which were executed in Illinois and/or contained Illinois choice-of-law provisions, and which required partial performance in Illinois; and (c) there are additional connections between the corporations and the State of Illinois (*e.g.*, advertising in Illinois, possession of an easement over an Illinois road, use of an Illinois sewer system, and attempts to purchase power plants located in Illinois).

PARTIES TO THE PROCEEDINGS

In addition to the parties listed by Petitioners, it should be noted that Commonwealth Edison, an Illinois Corporation ("Commonwealth Edison" or "Com Ed"), was a party to these proceedings and remains a defendant in the underlying lawsuits. The propriety of Illinois' assertion of personal jurisdiction over Commonwealth Edison, however, has not been disputed.

Moreover, the Petition for a Writ of Certiorari has been dismissed as to Respondent David Arcuri, as this Respondent has settled his claim against Petitioners.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceedings	ii
Table of Contents	iii
Table of Cited Authorities	iv
Statute Involved	1
Statement of the Case	1
Reasons for Denying the Writ	2
I. Petitioners Have Inaccurately Characterized The Illinois Appellate Court's Decision	2
II. The Illinois Appellate Court's Ruling Does Not Conflict With *Helicopteros Nacionales De Colombia v. Hall* Or *Perkins v. Benguet Consolidated Mining Co.*	9
III. This Case Does Not Have Far-Reaching Implications	24
Conclusion	29

TABLE OF CITED AUTHORITIES

Page

Cases:

Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102 (1987) 17, 21

Buddensick v. Stateline Hotel, Inc., 972 P.2d 928 (Utah. App. 1998), *cert. denied*, 982 P.2d 88 (Utah 1999), *cert. denied*, 528 U.S. 928 (1999) 23

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 15, 16, 17, 18, 21, 26

Burnham v. Superior Court of California, 495 U.S. 604 (1990) 9

Calder v. Jones, 465 U.S. 783 (1984) 14, 26

Cubbage v. Merchent, 744 F.2d 665 (9th Cir. 1984), *cert. denied*, 470 U.S. 1005 (1985) 27

Ex parte United Brotherhood of Carpenters and Joiners of America, AFL-CIO, 688 So.2d 246 (Ala. 1997), *cert. denied*, 521 U.S. 1118 (1997) 20, 21, 22, 23, 25, 26

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) ..... *passim*

Holt Oil & Gas Corp. v. Harvey, 801 F.2d 773 (5th Cir. 1986), *cert. denied*, 481 U.S. 1015 (1987) .. 27

Cited Authorities

Page

Hughes v. A.H. Robins Co., 490 A.2d 1140 (D.C. 1985) 24, 25

International Shoe Co. v. State of Washington, 326 U.S. 310 (1945) ..... *passim*

Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984) 14, 26

Kulko v. Superior Court of California, 436 U.S. 84 (1978) 15

Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560 (2d Cir. 1996), *cert. denied*, 519 U.S. 1006 (1996) ..... *passim*

Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952) ..... *passim*

Quill Corp. v. North Dakota, 504 U.S. 298 (1992) .. 26

Wilkerson v. Fortuna Corp., 554 F.2d 745 (5th Cir. 1977), *cert. denied*, 434 U.S. 939 (1977) 28

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 18, 21, 23

United States Constitution:

Fourteenth Amendment ..... i, 1, 10

Cited Authorities

Page

Statute:

735 ILCS § 5/2-209 1

Rule:

United States Supreme Court Rule 14.4 9

Other Authorities:

Borchers, Patrick J., *The Problem with General Jurisdiction*, 2001 U. Chi. Legal F. 119 ..... 8, 11, 27

Juenger, Friedrich K., *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141 ..... 7, 8, 9

Mills, Robert T., *Personal Jurisdiction over Border State Defendants: What does Due Process Require?*, 13 S.Ill.U. L.J. 919 (1989) 28, 29

Twitchell, Mary, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. Chi. Legal F. 171 ..... 8, 9

STATUTE INVOLVED

In addition to the constitutional provision set forth by Petitioners (the Due Process Clause of the Fourteenth Amendment), this case involves Illinois' "long-arm" statute (735 ILCS § 5/2-209), the relevant portions of which are included in the opinion of the First District of the Appellate Court of Illinois (hereinafter, the "Illinois appellate court" or the "lower court") (Pet. App. A at 15a-16a).

STATEMENT OF THE CASE

The appellate record in these consolidated cases, which deals exclusively with issues of personal jurisdiction, exceeds 1,500 pages in length, yet Petitioners have essentially limited their discussion to a few select facts which favor their position. Petitioners' minimal discussion of the facts falls far short of this Court's requirement and, as discussed further below, warrants the denial of their Petition.

Because the relevant facts are voluminous and are amply set out in the decision of the Illinois appellate court (*see* Pet. App. A at 2a-14a), Respondent refers the Court to the lower court's discussion rather than restating the facts here. Respondent will draw the Court's attention to specific facts where they are pertinent to his argument.

REASONS FOR DENYING THE WRIT

I.

PETITIONERS HAVE INACCURATELY CHARACTERIZED THE ILLINOIS APPELLATE COURT'S DECISION

Petitioners have significantly misrepresented the facts of this case and, accordingly, the Petition should be denied.

A. Petitioners' most blatant mischaracterization relates to the reasons underlying the Illinois appellate court's opinion. While recognizing (in a footnote) that the lower court mentioned other facts in its opinion, Petitioners posit that the court's opinion is based "solely" on the ground that the bulk of the output of the power plant in question was sold to an Illinois corporation. (Pet. at (i), 5 and 10.)

The Illinois appellate court did place great weight on the fact that the entire base output[1] of the State Line Generating Station (the "power plant" or the "plant") was committed to Commonwealth Edison (an Illinois corporation) for consumption in Illinois. As the following excerpt reveals, the court felt that this element of exclusivity was especially important:

> State Line Energy[2] committed to sell the Power Plant's electrical output to Commonwealth

1. The Power Purchase Agreement (one of various agreements defining the relationship between State Line Energy (*see* note 2, *infra*) and Com Ed) provided that the entire "normal operating capacity" (490 megawatts) was committed to Com Ed and that Com Ed retained a right of first refusal as to any power generated beyond 490 megawatts. (*See* Pet. App. A at 4a.)

2. State Line Energy, L.L.C. ("State Line Energy") owned the power plant and its equipment (Pet. App. A at 2a-3a.) After finding

(Cont'd)

> Edison, an Illinois company, for 15 years and derived almost all of its revenue from the sale of electricity to Commonwealth Edison. The contracts establishing this relationship were entered into in Illinois and made subject to Illinois law. As State Line Energy's petition to the IURC[3] reveals, State Line Energy fully realized and anticipated that "most, if not all" of the Power Plant's output would be consumed in Illinois.

(Pet. App. A at 21a.) The court further commented that "State Line Energy has established an essentially exclusive relationship with Commonwealth Edison that, as a practical matter, serves as the basis for its existence" (Pet. App. A at 23a; *see also* Pet App. A at 25a and 33a).

Nonetheless, it is a gross mischaracterization of the lower court's opinion to say, as Petitioners do, that the court relied upon this factor alone. A thorough reading of the opinion reveals that the court considered numerous facts in reaching its conclusion. The court provided a lengthy discussion of the facts, in which it observed the following:

(Cont'd)
that State Line Energy was "doing business" in Illinois for jurisdictional purposes, the court determined that the other four Petitioners were "doing business" through State Line Energy and were also, therefore, subject to personal jurisdiction in Illinois. (Pet. App. A at 20a-21a and 29a-30a.) Petitioners have not asked the Court to review that ruling (Pet. at 13 (n. 8)).

3. State Line Energy had filed a petition with the Indiana Utility Regulatory Commission (IURC), requesting that the IURC refrain from asserting jurisdiction over the power plant's operation. As one reason for this request, State Line Energy asserted that "most, if not all" of the plant's output would be utilized in Illinois. (Pet. App. A at 5a.)

1. The power plant abuts the Indiana-Illinois state line (Pet. App. A at 2a).

2. Many of the agreements between Com Ed and State Line Energy relating to the purchase and subsequent operation of the power plant were executed in Illinois and/or contained Illinois choice-of-law provisions (Pet. App. A at 4a-5a.) The Coal Supply Agreement, under which Com Ed was to supply all of the coal State Line Energy required to satisfy its obligations under the Power Purchase Agreement (*see* n.1, *supra*), additionally designated Illinois as the forum for any actions which might be brought to enforce its provisions (Pet. App. A at 4a).

3. The Training Services Agreement listed State Line Energy's Chicago post office box address and provided that State Line Energy employees were to be trained by Com Ed at an Illinois facility (Pet. App. A at 5a, 12a).

4. Steven Owen, a business unit manager of State Line Energy as well as an Illinois resident, testified that the main entrance to the power plant is "just on" the Indiana side of the state line and that the private road leading to that entrance lies partially in Illinois. Owen understood that State Line Energy possessed an easement over the road to allow access to the main entrance. (Pet. App. A at 10a-11a; *see also* Pet. App. C at 39a (circuit court's opinion).)

5. Owen testified that State Line Energy paid $3,672 per month to store 200 to 225 pallet loads of spare parts at a Com Ed facility in Illinois. State Line Energy paid no taxes on these parts while they were stored in Illinois, but would have to do so once they were moved to Indiana. (Pet. App. A at 11a.)

6. State Line Energy filed a petition requesting that the Indiana Utility Regulatory Commission (IURC) refrain from

asserting jurisdiction over the power plant's operation. In the petition, State Line Energy argued that "most, if not all" of the plant's output would be used in Illinois; that it did not anticipate that any of the plant's output would be sold or used in Indiana; and that Illinois would essentially review State Line Energy's transactions through its regulation of Com Ed (Pet. App. A at 5a-6a).

7. Pursuant to the Consulting Services Agreement, Com Ed performed certain services for State Line Energy in Illinois (Pet. App. A at 5a, 11a). Under the Facilities Agreement, a dedicated telephone line was established between the power plant and Com Ed's Illinois offices (Pet. App. A at 5a).

8. Southern Energy, Inc. ("Southern Energy") had bid on generating stations located in Illinois in 1993 and 1995 (Pet. App. A at 2a, 6a-7a). Petitioners' employees, as well as employees of other "Southern companies" (*see* Pet. App. C at 44a-45a), made several trips to Illinois surrounding the purchase of the power plant in question as well as the attempted purchases of other Illinois power plants. Among these employees were Randall Harrison, a vice president of Southern Energy, and Sheri Marcelene Fuller, senior vice president of Southern Energy and president of SEI State Line, Inc. ("SEI"). (Pet. App. A at 2a, 6a-7a, 9a, 12a).

9. In July, 1998 (the month of the explosion underlying these consolidated cases), State Line Energy sold power to the Illinois Municipal Electric Agency (Pet. App. A at 7a).

10. Southern Company ("Southern") advertised in Illinois and maintained a web site accessible to Illinois residents in order to build name recognition for the Southern companies (Pet. App. A at 2a, 8a).

11. Many of the workers employed at the power plant are Illinois residents (Pet. App. A at 3a).

12. One of the Respondents, Cyril Smotrilla, is an Illinois resident (Pet. at 6; Pet. App. A at 2a.)[4]

13. Alan Harrelson, vice president of SEI and State Line Holding Corporation ("State Line Holding") testified that the explosion underlying these lawsuits resulted in some power outages in Illinois (Pet. App. A at 2a, 7a-8a).

14. The power plant is connected to the Chicago sewer system (Pet. App. A at 11a).

15. The Chicago police and fire departments responded to the explosion in issue (Pet. App. A at 11a).[5]

Petitioners' suggestion that these facts did not enter into the lower court's ruling is untenable. The court plainly stated that "each case requires an independent determination of whether, under *all* of the circumstances, it would be fair to subject a defendant to the jurisdiction of the Illinois courts" (Pet. App. A at 21a [emphasis added]). If the court had

---

4. In addition, as Respondent Danielson noted in his Answer to the Petition for Leave to Appeal to the Supreme Court of Illinois (p. 3, n.1), he, too, has been residing in Illinois since this incident. In addition to his own apartment in Illinois, Respondent has spent time in Illinois hospitals and in his parents' Illinois home since he was injured.

5. The Illinois appellate court was also presented with many additional facts which, while not referenced in the opinion, strongly support the court's conclusion. As one compelling example, Steven Owen testified that the plant's daily output was dictated by Com Ed's dispatcher in Illinois (Deposition of Steven K. Owen, beginning at C. 726, pp. 37-41). John Long, a vice president of Com Ed (Pet. App. A at 11a), similarly testified that the plant was "under the control of the Com Ed dispatcher" in Glenbard, Illinois, and that dispatches were made "on an hour-to-hour basis or minute-to-minute basis" (Deposition of John T. Long, beginning at C. 772, pp. 19-20).

determined that the facts recited above were irrelevant, surely it would not have discussed them at such length in its opinion; nor would it have rebuked Petitioners for omitting this information from their appellate brief (Pet. App. A at 14a-15a). Because of the factual complexity of this case, Petitioners' assertion that the lower court based its decision on "one reason alone" (Pet. at 5) constitutes a significant misrepresentation to this Court.

B. Petitioners also characterize the contacts between themselves and Illinois as "unrelated to" Respondents' claims, even going so far as to suggest that the lower court "explicitly acknowledged that respondents' claim is unrelated to petitioners' alleged contacts with Illinois" (Pet. at (i), 2 and 4). In actuality, the court held that the underlying lawsuits did not "arise from" the contracts between Commonwealth Edison and State Line Energy (Pet. App. A at 18a-19a). This Court has recognized that such a distinction may be relevant to the jurisdictional analysis. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (n.10) (1984) (because the respondents conceded that the case did not arise out of *or* relate to the petitioner's contacts with Texas, the Court would not decide one way or the other whether "arising out of" and "related to" describe different scenarios or whether specific jurisdiction[6] would be proper if a cause of action "related

6. "Specific jurisdiction" refers to a forum's exercise of jurisdiction over a defendant when the cause of action "arises out of" or "relates to" the defendant's contacts with the forum. "General jurisdiction" refers to the exercise of jurisdiction when the cause of action does not "arise out of" or "relate to" those contacts. The terms "specific jurisdiction" and "general jurisdiction" were apparently coined by two commentators in the 1960's, but were ultimately adopted by this Court. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 (n. 8, 9) (1984); Juenger, Friedrich K., *The American Law of General Jurisdiction*, (Cont'd)

to" but did not "arise out of" the defendant's contacts with the forum); *see also* 466 U.S. at 420, 424-28 (Brennan, J., dissenting) (arguing that specific jurisdiction is appropriate where the defendant's contacts are "related to" the cause of action, even if the cause of action did not "formally 'arise out of'" such contacts).[7]

In this case, Respondents were injured at a power plant whose operation was governed by a series of contracts executed in Illinois and whose contacts with Illinois were substantial. Even assuming that Respondents' claims did not "arise out of" Petitioners' contacts with Illinois, it is certainly arguable that these claims "related to" those contacts. Thus, once again, Petitioners' misstatement of the lower court's holding is not inconsequential.

(Cont'd)

2001 U. Chi. Legal F. 141, 142. Earlier cases (*e.g.*, *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), and *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)) do not use these terms to distinguish between the two scenarios, but in the interest of brevity, Respondent uses the terms in this brief when discussing these cases. As described below, there is some confusion as to the applicability of the "arising out of" and "related to" language.

7. *See also* Twitchell, Mary, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. Chi. Legal F. 171, 190-93 (noting that, in many cases finding that general jurisdiction is appropriate, the dispute is "at least tenuously related to the defendant's forum contacts") and 205-06 (suggesting that the doctrine of specific jurisdiction should perhaps be modified to "permit jurisdiction to be found more easily over a broader scope of 'related' claims"); and Borchers, Patrick J., *The Problem with General Jurisdiction*, 2001 U. Chi. Legal F. 119, 126-27 (noting that the phrases "connected with" and "arising out of" are not "necessarily interchangeable," and demonstrating that it clearly makes a difference which phrase one uses in analyzing jurisdictional questions).

Pursuant to Supreme Court Rule 14.4, these inaccuracies in the Petition, standing alone, provide this Court with a sufficient reason to decline to review this case.

II.

THE ILLINOIS APPELLATE COURT'S RULING DOES NOT CONFLICT WITH *HELICOPTEROS NACIONALES DE COLOMBIA v. HALL* OR *PERKINS v. BENGUET CONSOLIDATED MINING CO.*

Petitioners assert that the Illinois appellate court's holding is at odds with this Court's opinions in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984).[8] However, a careful reading of those cases and of the lower court's opinion in this case reveals no such inconsistency.

The constitutional limits on personal jurisdiction were reconceptualized in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), wherein this Court first set forth the jurisdictional analysis which is used today. In *International Shoe*, the Supreme Court was asked to decide

---

8. This Court also upheld "tag" jurisdiction — a type of general jurisdiction — in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990). *See* Juenger, *supra* note 6 at 157-58. In *Burnham*, a divorce case, the Court unanimously upheld jurisdiction based upon service on the defendant while he was present in the state although the lawsuit was "unrelated to his activities in the State" (495 U.S. at 607) and although those activities were minimal. Although *Burnham* is factually distinguishable from this case in several ways, the lower court's decision here is consistent with *Burnham* insofar as the benefits these Petitioners received from their ongoing contacts with Illinois "certainly exceed the thin potential benefits received by the hapless traveler who barely sets foot in the forum's territory." Twitchell, *supra* note 7, at 180-81.

whether a Washington court could exercise jurisdiction over the defendant, a Delaware corporation, consistently with the Due Process Clause of the Fourteenth Amendment. The Court began by stating that

> due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. at 316 [citations omitted]. The Court suggested that a corporate defendant's isolated activities with respect to the forum might be sufficient to subject it to jurisdiction in lawsuits arising from those activities (*i.e.*, specific jurisdiction), and that such a defendant's connections with the forum might also subject it to jurisdiction in lawsuits "arising from dealings entirely distinct from those activities" (*i.e.*, general jurisdiction) when these connections were continuous and substantial. *Id.* at 317-18.

Based on the facts presented to it, the Court ultimately determined that it was proper for the Washington courts to exercise specific jurisdiction over the defendant. *Id.* at 313-14, 320. The Court, however, issued this cautionary statement:

> . . . [T]he criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. . . . Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly

> administration of the laws which it was the purpose of the due process clause to insure.

Id. at 319.

A. *Perkins* was the first general jurisdiction case which the Court decided following *International Shoe*. In *Perkins*, the plaintiff had sued the defendant mining company in Ohio for dividends and other damages she claimed were due to her as a stockholder of the company. *Perkins*, *supra*, 342 U.S. at 438-39. The defendant company was based in the Philippine Islands, but its mining operations there were temporarily halted due to wartime activities; thus, its president conducted parts of the company's business from Ohio for a period of time. *Id.* at 447-48. The plaintiff was not an Ohio resident, and the Court indicated (without explanation) that her claim did not arise out of the defendant's activities in Ohio. *Id.* at 438, 446.[9] The Ohio courts had declined to exercise jurisdiction over the defendant, but this Court concluded that such an exercise of jurisdiction would not offend due process.

The Court first clarified that, although the cause of action did not arise out of the defendant's activities in Ohio, it was proper to apply the guidelines of *International Shoe*. *Perkins*, 342 U.S. at 445-46. The Court also reiterated the principle set out in *International Shoe* that the analysis is largely fact-specific, commenting that "[t]he amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case." *Id.* at 445.

---

9. Although the lawsuit did not apparently "arise out of" the defendant's contacts with the forum, "one can now easily imagine an argument that the corporation's Ohio activity (or perhaps more accurately, inactivity) was related to the claims in the case." Borchers, *supra* note 7 at 124.

The Court proceeded to find that jurisdiction was proper, noting, *inter alia*, that the president maintained an office in Ohio where he conducted activities on the defendant company's behalf, such as carrying on business-related correspondence, holding directors' meetings and "supervis[ing] policies" dealing with the rehabilitation of the company's property in the Philippines. The Court also observed that two company secretaries worked in the president's Ohio office with him and that he maintained two Ohio bank accounts carrying "substantial balances of company funds." *Id.* at 447-48. The Court reasoned that these activities amounted to a "continuous and systematic supervision" of the company's limited wartime activities and that, accordingly, an exercise of jurisdiction by the Ohio courts would comport with federal due process. *Id.* at 448.

B. The Court again considered the propriety of general jurisdiction over a corporate defendant in *Helicopteros*. The plaintiff-respondents in *Helicopteros* were individuals who had filed wrongful death actions, premised upon a helicopter crash in Peru, in a Texas court. The lawsuits named three entities as defendants, including the petitioner, Helicopteros Nacionales de Colombia, S.A. ("Helicol"), which owned the helicopter. Helicol was a Colombian corporation which had contracted to provide helicopter transportation for a Peruvian consortium (the alter ego of a joint venture headquartered in Houston, Texas) during the consortium's construction of an oil pipeline in Peru. The plaintiffs' decedents were employed by the consortium and were working on the pipeline at the time of the crash. *Helicopteros*, *supra*, 466 U.S. at 409-10, 412.

The question for this Court in *Helicopteros* was whether Helicol's contacts with the State of Texas were sufficient to render it subject to general jurisdiction there. *Id.* at 409. Initially, the Court reaffirmed the applicability of *International Shoe* and noted that due process is satisfied for purposes of personal jurisdiction where a non-resident corporate defendant has

"certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 414 [quoting from *International Shoe*]. The Court further recognized that, even when (as in the case before it) the claims neither arose out of nor related to the defendant's contacts with the forum, jurisdiction is still proper as long as there are "continuous and systematic" contacts between the defendant and the forum state. *Id.* at 414-16.

Helicol's contacts with Texas consisted of the following: Helicol's chief executive officer made a trip to Houston to negotiate the contract with the consortium; Helicol accepted checks drawn on a Texas bank into its New York and Florida bank accounts; it purchased helicopters, equipment and training services from a Texas manufacturer; and the training services in question took place at the manufacturer's facility in Texas. *Id.* at 410-11.

The Court determined that Helicol's contacts with Texas were insufficient to subject it to general personal jurisdiction there. *Id.* at 415-16. In the Court's view, a single trip to Houston by Helicol's CEO could not be described as a "continuous and systematic" contact. The Court also opined that the issue with respect to the checks was of negligible significance considering that there was no indication that Helicol requested, or even agreed, that the checks be drawn on a Texas bank. *Id.* at 416-17. This left the Court to consider Helicol's purchases from the Texas manufacturer and the related training trips. Having found the other two contacts minimally significant, the Court opined that purchases and related trips, standing alone, were insufficient to justify an assertion of jurisdiction. *Id.* at 417.

In reaching its conclusion, the *Helicopteros* Court gave some indication of the types of contacts which might have

justified a different outcome. To wit, the Court noted that the petitioner had never sold any product that reached Texas; had never signed any contract in Texas; had never solicited business in Texas; had never owned real or personal property in Texas; and had never maintained an office or establishment there. Additionally, none of the respondents (plaintiffs in the underlying suits) were domiciled in Texas.[10] *Id.* at 411-12. The Court also noted that the petitioner's contract with the consortium, although negotiated in Texas, was signed in Peru and provided that any controversies arising from the contract would be submitted to the jurisdiction of the Peruvian courts. *Id.* at 410-11.

C. Petitioners' argument that the lower court's finding in the present case contravenes *Perkins* and *Helicopteros* is misguided. The contacts between the defendant in *Perkins* and the forum state (Ohio) were quite substantial; in fact, this Court later noted that, in *Perkins*, Ohio was essentially the corporation's principal place of business. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (n.11) (1984). However, the *Perkins* Court in no way indicated that contacts of such great magnitude were required as some sort of necessary minimum in order to justify an exercise of general jurisdiction. To the contrary, the *Perkins* Court recognized that the amount and kind of activities which will suffice to justify an exercise of jurisdiction "are to be determined in each case." *Perkins*, 342 U.S. at 445. This is a principle the

---

10. The Court noted, however, that when jurisdiction is otherwise proper, a plaintiff's *lack* of residential or other contacts with the forum *will not defeat* jurisdiction. 466 U.S. at 412 (n.5). The Court cited *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); and *Calder v. Jones*, 465 U.S. 783 (1984), in support. *Keeton* and *Calder* established that, while a plaintiff need not have any contacts with the forum in order to uphold an assertion of jurisdiction, a plaintiff's contacts "may be so manifold as to permit jurisdiction when it would not exist in their absence." *Calder*, 465 U.S. at 788; *Keeton*, 465 U.S. at 779-80.

Court has reinforced on several occasions. *See, e.g., Kulko v. Superior Court of California*, 436 U.S. 84, 92 (1978); and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485-86 (1985).

In this case, the lower court took all of the facts into consideration and ultimately determined that the *International Shoe* standard was satisfied (Pet. App. A at 31a-35a). The contacts in this case may not "resemble" those present in *Perkins* (Pet. at 12), but that does not mean that they are any less continuous or systematic. The determination of whether the *International Shoe* standard is met in a given case "is one in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.'" *Kulko, supra*, 436 U.S. at 92 [citation omitted]. The Illinois appellate court's opinion in this case is well-supported by the facts and is fully consistent with *Perkins*.

Petitioners' argument that the lower court's ruling here is "irreconcilable" with *Helicopteros* (Pet. at 12) is also faulty, as it rests on a selective reading of both the *Helicopteros* decision and the evidence in this case. Petitioners fail to point out that, in *Helicopteros*, the petitioner never sold any product that reached the forum, never signed any contract in the forum and never owned property in the forum. In the present case, Petitioners unquestionably sold electricity which reached Illinois; in fact, practically speaking, all of the power plant's output was sold to an Illinois corporation and was used in Illinois. Petitioners also stored personal property in Illinois and possessed an easement over an Illinois road which provided exclusive access to the plant's main entrance. Perhaps most significantly, Petitioners entered into several contracts in Illinois, many of which contained Illinois choice-of-law provisions.[11]

11. In considering whether a defendant has purposefully invoked the protections and benefits of a state's law for jurisdictional purposes, contractual choice-of-law provisions may and should be (Cont'd)

These compelling facts, especially when considered in conjunction with the other facts discussed above (*see* Section I., subsection A., *supra*), completely refute Petitioners' contention that the contacts in this case are "less significant" than those which existed in *Helicopteros* (Pet. at 13). To the contrary, Petitioners' contacts with Illinois are far more substantial than the *Helicopteros* petitioner's contacts with the State of Texas, and the lower court's decision to uphold the exercise of jurisdiction in this case was entirely warranted.

D. Three fairly recent cases in which this Court denied certiorari further demonstrate the soundness of the Illinois appellate court's decision.

1. In *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.* ("*Met Life*"), 84 F.3d 560 (2d Cir. 1996), *cert. denied*, 519 U.S. 1006, 1007 (1996), the plaintiff was a New York corporation with its principal place of business in New York, and the defendant was a Delaware corporation with its principal place of business in Pennsylvania. The focus of the lawsuit was an office building in Florida. The plaintiff sued the defendant in Vermont. *Met Life*, 84 F.3d at 564-65. It was undisputed that the lawsuit did not arise out of any contacts between the defendant and Vermont; therefore, the plaintiff's argument in support of personal jurisdiction was confined to the theory of general jurisdiction. *Id.* at 565.

(Cont'd)

considered in conjunction with other indicators of the defendant's "deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there." *Burger King*, *supra*, 471 U.S. at 481-82. The *Burger King* Court opined that the defendant's establishment of a 20-year interdependent relationship with the plaintiff's headquarters in the forum state was such an indicator. The *Burger King* decision thus bolsters the Illinois appellate court's reliance on Petitioners' establishment of a 15-year interdependent relationship with Commonwealth Edison of Illinois.

Summarizing applicable Supreme Court precedent, the *Met Life* court explained that the due process test for personal jurisdiction has two related components. First, the court must determine whether the defendant has sufficient contacts with the forum state to justify the exercise of jurisdiction. This prong of the test distinguishes between specific and general jurisdiction: "Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test, requiring the plaintiff to demonstrate the defendant's 'continuous and systematic general business contacts.'" *Id.* at 567-68 [citing *Helicopteros*]. The court emphasized that the minimum contacts analysis is "fact-intensive." *Id.* at 569, 570. The court additionally stressed that a defendant's contacts with the forum should not be examined piecemeal, but as a whole. *Id.* at 570-71.

Next, the court must ask whether the assertion of personal jurisdiction comports with "traditional notions of fair play and substantial justice" — *i.e.*, whether jurisdiction is reasonable under the circumstances of the case. The *Met Life* court observed that

> [t]he Supreme Court has held that the court must evaluate the following factors as part of this "reasonableness" analysis: (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies.

Id. at 568 [citing *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 113-14 (1987); *Burger King*, *supra*, 471 U.S.

at 476-77; and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)]. The court made a point of noting that it saw no basis for distinguishing between general and specific jurisdiction cases for purposes of this prong of the analysis. 84 F.3d at 573. The court further recognized that, while a defendant could defeat jurisdiction by presenting a compelling case as to the second prong of the test, "the exercise of jurisdiction is favored where the plaintiff has made a threshold showing of minimum contacts at the first stage of the inquiry." *Id.* at 568 [citing *Burger King*, 471 U.S. at 477], 575.

Turning to the facts of the case before it, the *Met Life* court observed that "[m]any cases, including this one, fall between *Perkins* and *Helicopteros*." *Id.* at 571. Despite the fact that the defendant owned no property in Vermont, the court concluded that "the contacts it did have with the state were more than sporadic or occasional." *Id.* at 573. The court elaborated as follows:

> While [defendant] Robertson's $4 million dollars in sales in Vermont between 1987 and 1993, standing alone, may not have been sufficient, its relationship with dealers selling its products and its so-called "authorized" builders, the visits to those dealers and builders by Robertson personnel, the advertising and support available to Vermont residents regarding Robertson's products, and the deliberate targeting of Vermont architectural firms as sales prospects, tips the balance in [plaintiff] Met Life's favor and leads us to conclude that it satisfied the "minimum contacts" requirement of the due process test.

Id. at 573. The court proceeded to find, however, that this was one of those exceptional cases in which the propriety of

general jurisdiction was overcome by the reasonableness prong of the test. *Id.* at 573, 575. In the court's opinion, two factors in particular weighed heavily against the exercise of jurisdiction. These were (a) the fact that the dispute implicated "absolutely no interest" of the State of Vermont, because the acts and omissions alleged in the lawsuit took place in distant states (Texas, Missouri and Florida); and (b) no witness or other evidence was located in Vermont. *Id.* at 574-75.

Met Life supports the lower court's finding of minimum contacts in the present case. In 1998 alone, Petitioners in this case earned approximately $25 million in sales from the State Line Generating Station (Pet. at 13-14), the large majority (if not all) of which were sales to Commonwealth Edison of Illinois. This fact, when considered in conjunction with the other contacts enumerated above, easily "tips the balance" in Respondents' favor with regard to the "minimum contacts" requirement.

In contrast to *Met Life*, however, the second prong of the test is also satisfied here. Illinois has an interest in the safety of the power plant (and concomitantly has an interest in this lawsuit) because Respondent Smotrilla, like many other individuals employed at the plant, is an Illinois resident.[12] As the circuit court reasoned, the fact that all of the plant's electricity is distributed to Illinois residents also means that Illinois interests are "greatly affect[ed]" and merits the conclusion that it is reasonable to expect Petitioners to defend an action in Illinois (Pet. App. C at 43a-44a).

---

12. As noted above, Respondent Danielson now resides in Illinois as well; however, because this fact was not included in the Illinois appellate court's opinion, Respondent mentions it here only in passing.

Additionally, it is clear that some of the necessary witnesses will be found in Illinois, including Steven Owen (a business unit manager of State Line Energy who resides in Illinois) and those members of the Chicago police and fire departments who reported to the plant following the explosion. While some witnesses will almost surely be located in Indiana, this fact does not defeat the propriety of jurisdiction under the circumstances present here. In *Met Life*, the plaintiffs filed suit hundreds of miles away from the site of the incident in question. Here, although Respondents were injured in Indiana (Petitioners' proposed forum), the power plant where the incident took place literally abuts the Indiana-Illinois state line. Petitioners cannot seriously argue that an Illinois trial would be burdensome while an Indiana trial would not. Thus, in light of *Met Life*, Illinois' exercise of jurisdiction over Petitioners is entirely reasonable.

2. *Ex parte United Brotherhood of Carpenters and Joiners of America, AFL-CIO* ("*United Brotherhood*"), 688 So.2d 246 (Ala. 1997), *cert. denied*, 521 U.S. 1118 (1997), also supports the result in this case. In *United Brotherhood*, the Alabama Supreme Court held that it was proper for Alabama to exercise general jurisdiction over the United Brotherhood of Carpenters (the "UBC" or the "union"). The union was named as one of several defendants in a lawsuit brought by BE&K Construction Company ("BEK" or the "construction company"), a non-union contractor headquartered in Alabama. BEK alleged that the defendants wrongfully attempted to prevent the construction company from performing labor contracts at two jobsites in Minnesota and Oregon. The Minnesota jobsite was the primary focus of the lawsuit. 688 So.2d at 247-48. The UBC was based in Washington, D.C. *Id.* at 247. The UBC maintained no offices, bank accounts or property in Alabama, and only 0.5% of its members resided in Alabama. *Id.* at 252.

Like the court in *Met Life*, the *United Brotherhood* court first explained that the *International Shoe* test requires a stronger showing of contacts when general jurisdiction is involved — namely, the plaintiff must show that the defendant's contacts with the forum have been "continuous and systematic." *Id.* at 250 [citing *Perkins* and *Helicopteros*]. If the defendant's contacts are sufficient, the court must then assess whether the exercise of jurisdiction would comport with considerations of fair play and substantial justice. *Id.* [citing *World-Wide Volkswagen* and *Asahi*].

The court recognized that the case before it was unique in that the union was an unincorporated, nonprofit entity whose purpose was to promote the pro-labor goals of its members, rather than to avail itself of the privileges of doing business with Alabama residents. *Id.* at 252. The union asserted that an exercise of general jurisdiction was improper based upon its nonprofit status, the fact that it owned no property in Alabama and the fact that only a small percentage of its members resided there. The court, however, disagreed. The court's decision rested in part on the fact that the union's collection of dues from its Alabama members, while not for profit, was nonetheless systematic and continuous. Another consideration the court deemed relevant was the fact that the UBC "consistently directed and/or supported pro-union activities at Alabama jobsites." *Id.* Finally, the court reasoned that, although the Alabama members of the union constituted only a small percentage of the overall organization, they did maintain a continuous relationship with the UBC in attempting to further their pro-union goals. *Id.*

The court next applied the *Burger King* factors and determined that the second prong of the test was also satisfied — *i.e.*, that jurisdiction was reasonable. *Id.* For this portion of the analysis, the court referred to its discussion of a separate defendant's objections to a *forum non conveniens* ruling in the lower court. *Id.* at 249-50, 252. "Of paramount

importance" to the court in this regard was Alabama's "compelling interest" in the litigation by virtue of the fact that BEK was an Alabama corporation which employed Alabama citizens and paid taxes in the state. *Id.* at 249. The court reasoned that, because the *forum non conveniens* factors were not compelling enough to overcome the plaintiff's choice of forum, it logically followed that "traditional notions of fair play and substantial justice would not be violated if the UBC [was] required to submit to the jurisdiction of an Alabama court." *Id.* at 252. As such, the lower court's exercise of general jurisdiction was upheld.

Much like the *United Brotherhood* defendant continuously and systematically collected dues from Alabama residents, Petitioners herein are continuously and systematically engaged in the sale of energy to Com Ed of Illinois. As the circuit court put it, "State Line Energy L.L.C.'s product, electricity, was continuously exchanging hands on a daily basis" (Pet. App. C at 43a). In addition, the operation of the power plant was "directed at" Illinois, not only because its output was sold exclusively to an Illinois corporation, but because it was actually used (with Petitioners' knowledge) by Illinois residents and because many Illinois residents worked at the plant. Under these circumstances, the fact that Petitioners' revenues from the plant may have constituted a small percentage of their overall revenues is of little significance. The facts conclusively show that Petitioners maintain a continuous relationship with Illinois and its residents, and as a result, jurisdiction is appropriate.

Moreover, the second prong of the test is satisfied here for the reasons set forth above. The State of Illinois has a compelling interest in this litigation, and Petitioners cannot demonstrate that Illinois — Respondents' forum of choice — is an overly burdensome forum for them. Indeed, this case presents a stronger argument for the exercise of jurisdiction than did the scenario in *United Brotherhood*, for an Illinois trial will not invoke "the judicial inefficiency of attempting to litigate this lawsuit

thousands of miles from its focal point." 688 So.2d at 256 (Butts, J., dissenting). The explosion in question took place at the State Line Generating Station which, as its name suggests, actually abuts the Indiana-Illinois state line.

3. In *Buddensick v. Stateline Hotel, Inc.*, 972 P.2d 928 (Utah. App. 1998), *cert. denied*, 982 P.2d 88 (Utah 1999), *cert. denied*, 528 U.S. 928 (1999), as in the instant case, the plaintiff was injured at the defendant's state-line facility (a casino, restaurant and hotel sitting in Nevada near the Nevada-Utah border). Although the defendant's facility was located in Nevada, the plaintiff brought her lawsuit in Utah. The court concluded that Utah could permissibly assert general jurisdiction over the defendant where, *inter alia*, the defendant advertised in Utah, leased Utah property directly adjacent to its facility; contracted for goods and services in Utah; and maintained two post office boxes in Utah. *Buddensick*, 972 P.2d at 929-30. The court opined that, under these circumstances, the defendant reasonably should have foreseen the possibility of having to defend itself there. As a result, it was not unreasonable to for the defendant to be "hauled into court" in Utah. *Id.* at 931 [citing *World-Wide Volkswagen*]. The similarities between *Buddensick* and the instant case are readily apparent.

The Illinois appellate court's opinion in this case is fully consistent with the precedent established in *Perkins* and *Helicopteros*. It is also consistent with cases such as *Met Life*, *United Brotherhood* and *Buddensick*, which this Court has declined to review. Accordingly, the Petition should be denied.

III.

THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS

Petitioners cite a litany of cases in an attempt to demonstrate that the state and lower federal courts are "deeply divided" on the issue of general personal jurisdiction (Pet. at 15-24). Petitioners also contend that the present case is a prime candidate for this Court's review because it presents the issue of the permissible scope of general jurisdiction "without factual complexity" (Pet. at 5). Once again, however, Petitioners' arguments are misguided.

A. Simply stated, the courts have reached different conclusions regarding the propriety of general personal jurisdiction because they have considered a broad range of fact patterns. As such, those courts which have found general jurisdiction appropriate are not necessarily in discord with the courts which have reached an opposite conclusion.

1. As an example, Petitioners submit that some courts "have ruled that even substantial sales accompanied by a physical presence by the defendant are insufficient to permit the assertion of general jurisdiction" and that the views of such tribunals are "at the furthest remove from the Illinois courts." (Pet. at 17-18.) Petitioners cite *Hughes v. A.H. Robins Co.*, 490 A.2d 1140 (D.C. 1985), as such a case, pointing out that general jurisdiction was deemed inappropriate therein even though the defendant maintained an office in the forum and made $3 million in sales there. (Pet. at 18.) Notably, however, Petitioners neglect to mention the *Hughes* court's repeated references to the fact that the defendants had never negotiated any contracts in the forum. 490 A.2d at 1143, 1146 (n.4), 1148. Petitioners also fail to note that *Hughes* involved only one plaintiff, who was not a forum resident, and that the cause of action had "nothing to do with the forum." *Id.* at 1143, 1147, 1151.

In light of these facts, *Hughes* is entirely consistent with the Illinois appellate court's decision. Here, for the reasons discussed above, Illinois has a strong interest in this litigation. In addition, the revenues Petitioners generated by selling the power plant's output to Commonwealth Edison of Illinois (approximately $25 million in 1998) greatly exceed the revenues earned from sales in the forum by the *Hughes* defendant (approximately $3 million in one year (*Id.* at 1143, 1150)). Perhaps most important is the fact that Petitioners negotiated various contracts in Illinois and agreed that Illinois law would govern them. Under these circumstances, the fact that Petitioners did not maintain an office in Illinois does not render jurisdiction unreasonable. The *Hughes* court recognized that the weight accorded to a defendant's contacts "varies greatly with the circumstances of each case." *Id.* at 1146. The *Hughes* court did not act unreasonably in ruling against the exercise of jurisdiction. Just the same, in the scenario present here, the Illinois appellate court was correct in upholding the exercise of jurisdiction.

2. Petitioners contend that, at the other end of the spectrum, some tribunals have taken the same "extreme position" as the Illinois courts (Pet. at 19), upholding jurisdiction "just because the defendant made significant sales to customers from the forum state" and/or because the defendant's contacts with the forum were "deliberate rather than fortuitous" (Pet. at 20-21). As an example, Petitioners cite *United Brotherhood*, *supra*. Petitioners' interpretation of *United Brotherhood*, however, is flawed. As set forth above, that court ruled as it did for several reasons, primarily because the defendant's contacts with the forum were unquestionably "continuous and systematic" and because the forum had a "compelling interest" in the subject matter of the litigation. Clearly, such issues are proper for a court to consider when analyzing the propriety of jurisdiction; in fact, the phrase "continuous and systematic" comes directly from

this Court's opinions in *Perkins* and *Helicopteros*. *See Perkins*, 342 U.S. at 445, 448; and *Helicopteros*, 466 U.S. at 415-16. The Illinois appellate court used identical language (Pet. App. A at 33a) and also placed weight on the State's interest in the subject of the litigation (Pet. App. A at 34a). This is not an "extreme" approach to the jurisdictional analysis. To the contrary, it is entirely in accord with this Court's precedent.

3. Petitioners' suggestion that some courts have "unjustifiabl[y]" used specific jurisdiction concepts in analyzing questions of general jurisdiction (Pet. at 23) is equally unavailing. A stronger showing must be made in the case of general jurisdiction; nonetheless, it is well-established that the same basic test (*i.e.*, the *International Shoe* test) applies to general and specific jurisdiction scenarios alike. Accordingly, this Court itself has intermingled these concepts to a certain extent. For example, in *Helicopteros*, this Court cited to *Keeton* and *Calder* — both specific jurisdiction cases. 466 U.S. at 412 (n.5). Conversely, in *Keeton*, the Court cited to *Perkins* (465 U.S. at 779), and in *Burger King* (a specific jurisdiction case), the Court drew upon its opinion in *Helicopteros* (471 U.S. at 475). *See also Quill Corp. v. North Dakota*, 504 U.S. 298, 307-08 (1992) (reinforcing that "*all* assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny" and that, pursuant to these principles, a corporate defendant which purposefully avails itself of the benefits of an economic market in the forum state may subject itself to personal jurisdiction in the state even if it has no physical presence there [emphasis added, citations omitted]).

The notion that specific and general jurisdiction are closely-related concepts can also be gleaned from cases in which this Court has denied certiorari. For instance, as the above discussion demonstrates, both the *Met Life* and *United Brotherhood* courts relied rather extensively on specific

jurisdiction opinions. *See also Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 779 (n. 5) (5th Cir. 1986), *cert. denied*, 481 U.S. 1015 (1987) (stating that, "[w]hile the distinction between 'general' and 'specific' jurisdiction provides an [sic] useful analytic device, the use of these categories does not alter the fundamental focus of the minimum contacts inquiry").[13]

As such, courts which rely in part on specific jurisdiction decisions in ruling on questions of general jurisdiction — including the Illinois appellate court — are not acting under any "misconception" (Pet. at 23). To the contrary, their logic is in full compliance with precedent.

---

13. Petitioners contend that the "great expansion" of the permissible scope of specific jurisdiction is a reason to avoid expanding general jurisdiction (Pet. at 23). However, some commentators have cogently argued that the opposite is true. *See* note 7, *supra*. As Professor Borchers put it, general jurisdiction sometimes serves as a "safety valve" that allows access to a reasonable forum when the "restrictive" test for specific jurisdiction would deny it. Borchers, *supra* note 7 at 138-39. Interestingly, some courts which have ruled against general jurisdiction have essentially reached the same end result by taking a more expansive view of specific jurisdiction. For example, in *Cubbage v. Merchent*, 744 F.2d 665 (9th Cir. 1984), *cert. denied*, 470 U.S. 1005 (1985), a medical malpractice case, the court ruled out general jurisdiction (744 F.2d at 667-68), but went on to find that specific jurisdiction was appropriate. In the court's opinion, the plaintiff's claim "arose out of or resulted from" the defendant's advertising in the forum state (California) and participation in a health care program there. *Id.* at 670. Notably absent from the opinion, however, was any suggestion that the plaintiff sought treatment with the defendants in response their advertising in California or their participation in the aforementioned health care program. The court apparently found it sufficient that the plaintiff was a California resident and that the defendants' connections with the state enabled them to attract and earn revenues from California residents. *Id.* at 670, 672.

B. Petitioners submit that this case presents the question of the permissible scope of general jurisdiction "clearly" and "without factual complexity" because the lower court based its decision on "one reason alone." (Pet. at 4-5.) This contention is amply refuted by the discussion in Section I, subsection A, *supra*. The lower court relied on an abundance of facts, explicitly stating that "the record on appeal [was] long and the facts [were] complex" (Pet. App. A at 15a). As a result, this case is no more "well suited for this Court's review" than other "multi-factor" cases which, as Petitioners concede, are "unlikely to provide clear guidance for future cases in which a different combination of factors is present" (Pet. at 5).

Because the circumstances of each case are key in determining the propriety of jurisdiction, this case has no far-reaching implications. Its facts are not only complex; they are also unique. Take, for instance, the power plant's proximity to a state line. This issue raises special considerations which will not apply in all cases. *See Wilkerson v. Fortuna Corp.*, 554 F.2d 745, 746, 748 (5th Cir. 1977), *cert. denied*, 434 U.S. 939 (1977) (finding that the defendant race track's contacts with Texas were substantial and continuous, and noting that the race track's location "just across the [New Mexico-Texas] state line" played an important part in supporting jurisdiction in Texas).

Even among cases involving "border-state" defendants, this case differs from many others in that the electricity sold by Petitioners can be, and indisputably is, carried into Illinois and used there by Illinois residents. One commentator has noted that, in many "border-state" cases, jurisdiction is potentially problematic because the defendants — entities such as taverns, resorts and hospitals — are not engaged in the sale of goods which can be carried into the forum state. Mills, Robert T., *Personal Jurisdiction over Border State*

Defendants: What does Due Process Require?, 13 S.Ill.U. L.J. 919, 921 (1989). In this way, the instant case presents an argument for jurisdiction that is rarely available to plaintiffs in "border-state" cases, and a determination as to the propriety of jurisdiction here will not necessarily be useful in analyzing other cases, even when those cases involve "border state" defendants. For this reason and those discussed above, this case has no far-reaching implications and is not a good candidate for this Court's review.

CONCLUSION

For all of the foregoing reasons, Respondent Paul Danielson respectfully requests that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

KIRSTEN M. DUNNE
Counsel of Record
JOSEPH P. SORCE
GOLDBERG, WEISMAN & CAIRO, LTD.
Attorneys for Respondent
Paul Danielson
One East Wacker Drive
Suite 3400
Chicago, IL 60601-9654
(312) 464-1200